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Internally Displaced Persons (IDPs)

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A. Introduction

1 **Internally Displaced Persons** ('IDPs') are described by the United Nations Guiding Principles on **Internal Displacement** as

persons or groups of **persons** who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

2 IDPs are similar to → *refugees* in the sense that they may share the same experiences, needs, fears, and wants. Consequently, IDPs are sometimes referred to as '**internal** refugees'. However, this label is misleading as there is a significant legal distinction between IDPs and refugees which stems primarily from the fact that a refugee has crossed an international frontier. A refugee is granted legal status and a range of rights set out in the Refugee Convention (1951) and falls within the protection mandate of the UN Refugee Agency, the UNHCR (→ *Refugees, United Nations High Commissioner for [UNHCR]*). IDPs, on the other hand, remain the responsibility of the State and have no specific international agency to protect them.

B. Internal Displacement Today

3 According to the **Internal Displacement Monitoring Centre**, there were 33.3 million **displaced persons** through conflict and violence at the end of 2013. Sub-Saharan Africa had the largest regional amount of IDPs (12.5 million), and 63% of all IDPs globally came from Syria, Colombia, Nigeria, the Democratic Republic of the Congo, and Sudan.

4 States with at least 1 million IDPs at the time of writing include Colombia (5.7 million), the Democratic Republic of the Congo (at least 2,551,200), Iraq (at least 2.3 million), Nigeria (3.3 million), Pakistan (at least 1.15 million), Somalia (1.1 million), South Sudan (1,136,000), Sudan (at least 2,890,000), and Syria (6.5 million). States with over 500,000 IDPs include Afghanistan (at least 667,200), Azerbaijan (at least 543,000), the Central African Republic (at least 527,000), India (at least 531,000), and Myanmar (up to 643,000). Palestine has at least 650,000 IDPs. Causes of displacement vary greatly and include protracted conflict, land disputes, evictions, violence by State and non-State armed groups, and natural disasters. An update of these figures will be available in June 2015 when the UNHCR releases its 2014 Global Trends Report.

C. Institutional Protection of IDPs

1. UN Representative of the Secretary General on **Internally Displaced Persons**

5 The international community has taken significant steps in the move towards a protection framework for IDPs. The first of these developments was the creation of the position of Representative of the Secretary General on **Internally Displaced Persons**. Francis M Deng first served in this position from 1992 to 2004, and was succeeded by Walter Kälin as the Representative of the UN Secretary General on the Human Rights of **Internally Displaced Persons** from 2004 to 2010. Chaloka Beyani, a professor at the London School of Economics, is the current Special Rapporteur on the Human Rights of **Internally Displaced Persons**, having been appointed to the position in November 2010. The areas of activity of the Special Rapporteur include promoting respect for the human rights of IDPs; engaging in dialogue with governments, → *non-governmental organizations*, and other actors; strengthening the international response to **internal** displacement; and mainstreaming the human rights of IDPs

in the UN system.

2. Collaborative Approach

6 Before 2005, under the so-called ‘Collaborative Approach’, all agencies shared the responsibility for responding to situations of **internal** displacement. Relevant agencies included the UNHCR, the → *United Nations Children’s Fund (UNICEF)*, the → *World Food Programme (WFP)*, the → *World Health Organization (WHO)*, the → *United Nations Development Programme (UNDP)*, the Office of the High Commissioner for Human Rights (‘OHCHR’), the → *International Organization for Migration (IOM)*, and NGOs. Although activities were coordinated by the Emergency Relief Coordinator, there was no accountability or locus of responsibility. In addition, there was no predictability of action as the different agencies were able to pick and choose which situations to act upon. A UNHCR Evaluation and Policy Analysis Unit report published in 2005 made it clear that the agency had been ‘uncertain, inconsistent and unpredictable’ in its policies towards IDPs. That same year, the Secretary General issued a report entitled ‘Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations’ which identified ‘significant capacity gaps’ in areas such as shelter and camp management and protection. It recognized that the protection of civilians is primarily the responsibility of States, but also that ‘the humanitarian system must work to fill protection gaps’ and that ‘partnerships within the system may be necessary to overcome those gaps in assistance—such as protection and camp management in situations involving IDPs—that do not enjoy leadership from any one agency.’

3. Cluster Approach

7 To address these concerns, the Inter-Agency Standing Committee agreed to a division of labour amongst the UN and other humanitarian agencies in 2005. Called the ‘Cluster Approach’, nine different areas of humanitarian response were clustered together and each was assigned a ‘cluster lead’. The cluster lead must set out each need to be addressed, as well as organize the planning, coordination, and reporting for the relevant situation. It is the first port of call and the provider of last resort in respect of each individual operation.

8 The aims of the reform were to improve the predictability, timeliness, and effectiveness of humanitarian response; to provide leadership and accountability; and to address the responsibility gaps identified in the Secretary General’s report. The Cluster Approach was originally implemented in Chad, Liberia, the Democratic Republic of the Congo, Somalia, and Uganda.

9 The new ‘Cluster Approach’ was not in itself a mandate-giving mechanism, but a more clearly spelled-out role, based on the notion that governments have the primary role for protection of their citizens. It is an arrangement through which the existing mandates of international organizations are brought together in a coordinated and predictable fashion. The following agencies are leads or co-leads within the cluster approach: → *Food and Agriculture Organization of the United Nations (FAO)*, UNHCR, IOM, UNDP, UNICEF, Save the Children (UK), International Federation of the Red Cross, the Office for the Coordination of Humanitarian Affairs, WFP, WHO, and the Office of the High Commissioner for Human Rights.

D. Legal Protection of IDPs

1. International Law

10 The inadequacy of IDP protection is illustrated by the scarcity of legal provisions governing this area. By virtue of remaining inside an international frontier, IDPs are not allocated a legal status and until recently, had no treaty specifically for their protection. IDPs are nonetheless protected by human rights and humanitarian law, and by analogy, refugee law.

(a) International Human Rights Law

11 With the exception of two regional instruments discussed below, there is no explicit prohibition of **internal** displacement in any legally binding international agreement. Human rights law is nonetheless relevant as it applies to all humans without distinction and some instruments contain provisions that are particularly relevant to the **internally displaced**. Art. 12 → *International Covenant on Civil and Political Rights (1966)* ('ICCPR'), for example, protects freedom of movement and thus forced displacement is *prima facie* unacceptable under the ICCPR. Similarly, Art. 26 of the same instrument sets forth the principles of equality and non-discrimination, while the right to liberty and security of the **person** is protected by Art. 9. In addition, Art. 17 provides that no-one shall be subjected to arbitrary or unlawful interference with, inter alia, his home, and the → *Human Rights Committee* has found that forced evictions can result in a violation of this provision. However, Arts 12, 17, and 26, as well as many other articles may be derogated from in time of emergency, provided the criteria set out by Art. 4 are satisfied.

12 The → *International Covenant on Economic, Social and Cultural Rights (1966)* ('ICESCR') also contains provisions that are relevant to **internal** displacement. Art. 11 ICESCR protects the right to an adequate standard of living, including the right to adequate housing. In General Comment 7, the → *Committee on Economic, Social and Cultural Rights (CESCR)* was of the view that Art. 11 entails 'the right to be protected against "arbitrary or unlawful interference" with one's home', and that this right 'is not qualified by considerations relating to its available resources.' In addition, the Committee held that 'evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.'

13 Art. 5 Convention on the Elimination of All Forms of Racial Discrimination (1965) prohibits discrimination and guarantees, inter alia, the rights of security of the **person**, freedom of movement, and housing. General Recommendation XXII of the Committee on the Elimination of all Forms of Racial Discrimination sets out that Art. 5 entails the right of IDPs of voluntary and safe return to their homes and the right to restoration and compensation of property that was seized during displacement. General Recommendation XXII also asserts that the obligation of non-refoulement attaches to States *vis-à-vis* IDPs.

14 The Committee against Torture has found that forced evictions resulting in **internal** displacement can amount to inhumane or degrading treatment, as prohibited by Art. 16 Convention against Torture (1984), even where such evictions are not carried out by public officials. In addition, the Committee has held that Israel's policies of demolishing housing may amount to cruel, inhuman, or degrading treatment in violation of Art. 16.

15 The Convention on the Rights of the Child (1989) also contains provisions that are relevant to **internal** displacement. Art. 1 stipulates that the rights provided in the Convention are only applicable to those under 18 years of age. However, Art. 3 provides that the best interests of the child are to be taken into account in all actions concerning children and this could, for example, entail a right to family unification. Of particular relevance to **internally displaced** children are: Art. 9, which provides that a child shall not be separated from his or her parents against their will; Art. 16, which prohibits arbitrary or unlawful interference with the child's family life; and Art. 20, which provides that a child deprived of his or her family environment is entitled to special protection and assistance from the State.

16 Regional conventions also contain rights particularly relevant to IDPs. Despite the fact that there is no explicit prohibition of **internal** displacement contained in the ECHR, in examining situations of **internal** displacement, the → *European Court of Human Rights (ECtHR)* has found violations of: Art. 8 (respect for private and family life, home and correspondence); Art. 3 (the prohibition of torture and inhuman or degrading treatment or punishment); Art. 13 (right to an effective remedy); and Art. 1 of Protocol 1 (the right to peaceful enjoyment of possessions).

17 Similarly the → *African Charter on Human and People's Rights (1981)* does not explicitly prohibit **internal** displacement. However, in Case 279/03-296/05 *Sudan Human Rights Organisation & Centre for Housing Rights and Evictions (COHRE)/Sudan*, the → *African Commission on Human and People's Rights (ACommHPR)* found that the **internal** displacement by Sudan of the indigenous black tribes in the Darfur region violated numerous provisions of the African Charter on Human and People's Rights. These included the prohibition of cruel, inhuman or degrading punishment and treatment (Art. 5); the obligation to respect the liberty and security of the **person** (Art. 6); the right to be heard (Art. 7); the right to freedom of movement (Art. 12); the right to property (Art. 14); the right to enjoy the best attainable State of physical and mental health (Art. 16); protection of family rights (Art. 18); and the right of all peoples to economic, social, and cultural development (Art. 22).

18 The → *Inter-American Court of Human Rights (IACtHR)* and the → *Inter-American Commission on Human Rights (IACommHR)* have found multiple violations of the → *American Convention on Human Rights (1969)* in situations concerning **internal** displacement. These rights include: Art. 5 (right to humane treatment); Art. 7 (right to personal liberty); Art. 11 (2) (protection of honour and dignity); Art. 19 (protection of the child); Art. 21 (right to property); Art. 22 (freedom of movement); and Arts 8 and 25 of the Convention (judicial guarantees and judicial protection) in relation to Art. 1 (1) (obligation to respect rights).

19 The → *American Declaration of the Rights and Duties of Man (1948)* also contains rights which may be violated in situations of **internal** displacement. These include: Art. V (the right to the protection of personal honour and reputation, and to private and family life); Art. VI (the right to a family and protection thereof); Art. VIII (the right to residence and movement); Art. IX (the right to inviolability of the home); Art. XI (the right to the preservation of health and well-being); and Art. XXIII (the right to property).

(b) International Humanitarian Law

20 The protection provided by humanitarian law is more comprehensive during an international conflict as the Geneva Convention relative to the Protection of Civilian **Persons** in Time of War ('Fourth Geneva Convention') and Protocol Additional to the Geneva Conventions of 12 August 1949, and → *Geneva Conventions Additional Protocol I (1977)* are applicable. Art. 49 of the former Convention prohibits individual or mass forcible transfers, and this provision forms part of → *customary international law*.

21 The applicability of humanitarian law in non-international armed conflict is much less. However, Common Art. 3 Geneva Conventions ('Common Article 3') is applicable in situations of 'armed conflict not of an international character' and it has been declared by the → *International Court of Justice (ICJ)* as forming part of customary international law. The guarantees applicable in non-international armed conflicts are expanded upon in the → *Geneva Conventions Additional Protocol II (1977)*. It is composed of 15 articles which contain more detailed provisions on fundamental guarantees, treatment of the wounded and sick, and the protection of the civilian population. Of particular relevance to IDPs is Art. 17, which prohibits the forced movement of civilians. These provisions are, however, much less comprehensive when compared to the rules applicable to international conflicts. Such limited coverage is regrettable, considering that the largest amount of IDPs is created during **internal** armed conflict and it is in that situation that the need for specific protection arises.

(c) Refugee Law

22 Finally, refugee law offers a useful example when developing a protection framework for the **internally displaced**. It can serve as a point of comparison and might also influence the development of a protection framework for IDPs. Many of the Guiding Principles were inspired by provisions of refugee law, including the Refugee Convention, the Convention Governing the

Specific Aspects of the Refugee Problem in Africa ('OAU Convention'), and UNHCR documents such as the 1991 Guidelines on the Protection of Refugee Women and the 1994 Guidelines on the Protection and Care of Refugee Children. Consequently, the influence of refugee law may be seen in many of the Guiding Principles on **Internal** Displacement, which are discussed below. For example, the right of non-refoulement which is found in Art. 33 (1) of the Refugee Convention is set out in Principle 15, notwithstanding that no right as applicable to IDPs existed in international law. In addition, the right of voluntary return of IDPs (Principle 28) was influenced by Art. 5 OAU Refugee Convention (1969). Finally, inspiration also came from ExCom, in the formulation of the principle of family reunification (Principle 7), which was influenced, in part, by UNHCR ExCom Conclusion No 24 (XXXII) (1981) which states that '... every effort should be made to ensure the reunification of separated refugee families.'

2. Guiding Principles on **Internal** Displacement

23 In 1992, the amount of IDPs worldwide numbered 25 million. Mr Francis Deng, the then-Representative of the UN Secretary General on IDPs, directed a team of experts in examining the existing legal protection for IDPs which resulted in a report entitled the 'Compilation and Analysis of Legal Norms.' The report concluded that there remained some gaps in IDP protection, it identified a need 'to restate general principles of protection in more specific detail', and finally, it advocated the creation of 'a future international instrument on the protection of the **internally displaced**.'

24 The General Assembly heeded this suggestion, and together with the Commission on Human Rights it requested Mr. Deng to create a framework for the protection of IDPs. The form of the framework was unspecified, and consequently the Representative decided to elaborate a set of non-binding Guiding Principles. The Guiding Principles were submitted to the Human Rights Commission in 1998 and aimed to 'address the specific needs of **internally displaced persons** worldwide by identifying rights and guarantees relevant to their protection.' The 30 principles were divided into five parts: i) General Principles; ii) Principles Relating to Protection from Displacement; iii) Principles Relating to Protection During Displacement; iv) Principles Relating to Humanitarian Assistance; and v) Principles Relating to Return, Resettlement and Reintegration.

25 Although technically, the Guiding Principles is a → *soft law* document, many of the principles are based on existing legal provisions and are thus binding on States. However, the question remains whether they offer any substantial additional legal protection to the **internally displaced**. Their legal authority may be challenged on three grounds: First, they were not drafted by States and were in fact met with considerable hesitation by some States in the General Assembly. Second, not all Principles reflect hard law and thus are not, *ipso facto*, legally binding. Principle 15 (b), for example, provided for the right of non-refoulement *vis-à-vis* IDPs, notwithstanding that no such right exists under international law. Finally, although the Principles have been referred to in the resolutions of international organizations and have influenced domestic policies, they are not opposable to States.

26 That said, although not *ipso facto* legally binding, the Guiding Principles have been quite influential in domestic spheres. Both Burundi and Angola passed legislation in which the preamble recognizes the Guiding Principles as authoritative. Other governments, such as those of Georgia, Liberia, Nepal, and Sri Lanka have used the Principles as a basis for domestic laws and policies. The most significant of all has been the acceptance of the Guiding Principles in Colombia. Laws, decrees, and policies that reflect the Guiding Principles on **Internal** Displacement have been enacted, and Colombia's laws on **internal** displacement are now among the most advanced in the world. The Constitutional Court has held that the national authorities are bound by the Guiding Principles and must carry out IDP protection 'in conditions that are compatible with full respect for the Guiding Principles.'

27 The Guiding Principles have also been referenced by various international organizations, most notably the General Assembly of the United Nations. In 2000, the General Assembly described the Principles as part of ‘a comprehensive framework for the protection of **internally displaced persons**.’ The language of the relevant General Assembly resolutions has grown gradually warmer and more welcoming of the Principles, and by 2004 the Guiding Principles were being described as ‘an important tool for dealing with situations of **internal** displacement.’ The resolution went on to say:

[The General Assembly] welcomes the fact that an increasing number of States, United Nations organizations and regional and non-governmental organizations are applying them as a standard, and encourages all relevant actors to make use of the Guiding Principles when dealing with situations of **internal** displacement.

28 This phraseology was repeated in numerous subsequent resolutions, and in 2008, the General Assembly described the Principles as ‘the key international framework’ for the protection of the **internally displaced**.

3. Treaties on **Internal Displacement**

(a) Pact on Security, Stability and Development in the Great Lakes Region 2006

29 In 2006, the Pact on Security, Stability and Development of the Great Lakes Region was signed by the 11 States of the International Conference of the Great Lakes Region and entered into force in 2008. Two of the Pact’s ten protocols are relevant to the issue of **internal** displacement: the Protocol on the Protection and Assistance to **Internally Displaced Persons** and the Protocol on the Property Rights of Returning Populations. To a lesser extent, the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children also deals with IDP protection, as there is a high level of sexual violence in situations where IDPs are found.

30 The Great Lakes Pact as a whole is highly significant in the context of the Guiding Principles as it was the first multilateral instrument in the international community which binds Member States to implement the Guiding Principles in their domestic legislation. Art. 9 Protocol on the Protection and Assistance to IDPs is particularly relevant. States Parties are obliged ‘to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to **internally displaced persons** in the Great Lakes Region’, to ‘use the “Annotations of the Guiding Principles on **Internal Displacement**” as an authoritative source for interpreting the application of the Guiding Principles’ and to ‘enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems.’

(b) Convention for the Protection and Assistance of **Internally Displaced Persons** in Africa (‘Kampala Convention’)

31 The trend of binding States at regional level has continued on the African continent and the African Union recently adopted the Convention for the Protection and Assistance of **Internally Displaced Persons** in Africa, the text of which is broadly based on the Guiding Principles.

32 The objectives of the Convention are to promote and strengthen regional and national IDP protection measures, to establish a legal framework for the prevention of **internal** displacement and the protection of IDPs, and to set out the obligations of States Parties, non-State actors, and stakeholders regarding the prevention of **internal** displacement and assistance to IDPs in Africa. The Convention sets out the responsibilities of States Parties relating to prevention, protection, and assistance in situations of **internal** displacement as well as States Parties’

obligations relating to sustainable reform, local integration, or relocation. In addition, the Convention sets out an obligation on States Parties to prevent, as much as possible, displacement cause by projects carried out by public or private actors. Finally the Convention obliges States Parties to create an updated register of IDPs and to provide **persons** affected by displacement with effective remedies.

33 The Kampala Convention represents the first continent-wide instrument for the protection of the **internally displaced**. It breaks new ground in numerous respects, including by providing a detailed elaboration of the right to be protected against arbitrary replacement (Art. 4 (4)); by identifying the responsibilities *vis-à-vis* IDPs of non-State actors such as armed groups (Art. 7), international organizations (Art. 6), and humanitarian agencies (Art. 6); and by expanding the range of remedies available for IDPs beyond property restitution to include 'just and fair compensation and other forms of reparations, where appropriate ... in accordance with international standards' (Art. 12). The Kampala Convention was unanimously adopted by 46 African nations and signed by 17 heads of State, governments, and ministers for foreign affairs. The Convention entered into force on 6 September 2012. At the time of writing, the Convention has 22 States Parties.

E. Assessment

34 Owing predominantly to concerns relating to State → *sovereignty*, the issue of IDP protection has only gained significant momentum in the last 25 years. Within that time period, the conclusion of treaties specific to the needs of IDPs is a remarkable step forward, considering that at the time the Guiding Principles were drafted in the mid-1990s, the prevailing opinion was that States would be unwilling or would entirely reject committing to binding obligations *vis-à-vis* IDPs. That said, it has not yet been established whether the right to freedom of movement under international law entails that **internal** displacement is in itself a human rights violation. Until such a right is established, IDPs will not have any additional protection other than that which they are entitled to under the aforementioned regional treaties, human rights law, humanitarian law, and by analogy, refugee law. At a time where there are more than 33.3 million IDPs in the world, it is unfortunate that such gaps remain concerning their protection.

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